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December 26, 2024

Mr. Chad Pehrson, Esq.
Mr. Robert Harrington, Esq.
Kunzler Bean & Adamson, PC
50 W. Broadway, Suite 1000
Salt Lake City, Utah 84101

Gentlemen:

As you know, this firm is legal counsel for John Simkiss, Sarah Simkiss, and H2E Americas LLC.

Since our correspondence on December 18, 2024 I have had the opportunity to consult with my clients and review your discovery requests (the “Request”) with them. Your clients have a vastly over-inflated view of my clients’ involvement with respect to your litigation.

My clients are in receipt of your Subpoenas Duces Tecum. Please consider this correspondence our formal objection to the requests outlined therein. I specify our objections below:

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With respect to the Subpoena Duces Tecum to John Simkiss:

REQUEST FOR PRODUCTION 1

All communications between you and any of the following:

- | | |
|-----------------------------|-------------------------------|
| a. Ashley Miron Leshem | i. Amerimark Automotive Group |
| b. David Hesterman | AG |
| c. Nicolai Colshorn | j. Philomaxcap AG |
| d. Stefan Kammerlander | k. Achim Pfeffer |
| e. Alexander Coenen | l. Philocity Global GmbH |
| f. Martin Fasser Heeg | m. Whitetree Capital |
| g. Capana Swiss Advisors AG | n. Erika Zordaki |
| h. Amerimark Group AG | o. Josh McMorrow |

RESPONSE TO REQUEST 1

Mr. Simkiss objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. The Request lacks reasonable particularity sufficient to identify the materials requested. Mr. Simkiss objects to the extent that the Request purports to seek materials that are protected by attorney client privilege. Mr. Simkiss objects that the Request purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.

REQUEST FOR PRODUCTION 2

All communications between you and any of the following that refer or relate in any way to Rymark, Inc.; AmeriMark Group AG; AmeriMark Automotive AG; Nicholas Markosian; Vicky Small; John Kirkland; and/or the lawsuit captioned Capana Swiss Advisors AG et al. v. Rymark, Inc. et al., No. 2:23-CV_00467 (D. Utah):

- | | |
|-----------------------------|-----------------------------------|
| 1. Shaen Bernhardt | 6. Venable LLP, including but not |
| 2. Capana Swiss Advisors AG | limited to John Worden, Sarah |
| 3. Orbital AG | Diamond, and/or Arthur |
| 4. Josh McMorrow | Cirulnick |
| 5. H2E Americas LLC | |



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7. Parsons Behle & Latimer,
including but not limited to Erik
Christiansen, and/or

8. Nick Greenwood.

RESPONSE TO REQUEST 2

Mr. Simkiss objects. This Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mr. Simkiss objects to the phrase “refer or relate in any way to” as vague, ambiguous, and overbroad, lacking reasonable particularity, and purporting to seek documents that are wholly irrelevant to the litigation in question. Mr. Simkiss objects to the extent that the Request purports to seek materials that are protected by the attorney client privilege. Mr. Simkiss objects that the Request generally purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.

[Requests 3-9 are mislabeled in original]

REQUEST FOR PRODUCTION 10

All documents and communications that refer or relate to AmeriMark Automotive AG, AmeriMark Group AG, 4Service Cloud Tech AG, Rymark, Inc., Nicholas Thayne Markosian, John Kirkland, and/or Vicky Small.

RESPONSE TO REQUEST 10

Mr. Simkiss objects. This Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mr. Simkiss objects to the phrase “refer or relate to” as vague, ambiguous, and overbroad, and lacking reasonable particularity. Mr. Simkiss objects to the extent the Request seeks documents that are publicly available.

REQUEST FOR PRODUCTION 11

All documents and communications concerning Whitetree Capital.

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RESPONSE TO REQUEST 11

Mr. Simkiss objects. This Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mr. Simkiss objects to the phrase “concerning” as vague, ambiguous, and overbroad, and lacking reasonable particularity. Mr. Simkiss objects to the extent the Request seeks documents that are publicly available. The Request lacks reasonable particularity sufficient to identify the materials requested.

REQUEST FOR PRODUCTION 12

All documents and communications concerning Erika Zorkadi.

RESPONSE TO REQUEST 12

Mr. Simkiss objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mr. Simkiss objects that the word “concerning” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to this case. The Request lacks reasonable particularity sufficient to identify the materials requested.

REQUEST FOR PRODUCTION 13

All documents and communications that refer or relate to any business dealings between you and Orbital AG and/or Capana Swiss Advisors AG, including but not limited to loans you have received from Orbital AG and/or Capana Swiss Advisors AG and loans you have provided to Orbital AG and/or Capana Swiss Advisors AG.

RESPONSE TO REQUEST 13

Mr. Simkiss objects. This Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. The Request lacks reasonable particularity sufficient to identify the materials requested. Mr. Simkiss objects to the phrase “refer or relate to” as vague, ambiguous, and overbroad, lacking reasonable particularity, and purporting to seek documents that are wholly irrelevant to the litigation in question. Mr. Simkiss objects to the phrase “business dealings” as vague, ambiguous, and overbroad, lacking reasonable particularity, and purporting to seek documents that are

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wholly irrelevant to the litigation in question. Mr. Simkiss objects that the Request generally purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case. Mr. Simkiss objects to the extent that the Request purports to seek materials that are protected by attorney client privilege.

REQUEST FOR PRODUCTION 14

All documents and communications that refer or relate to any actual or potential transaction between any of the following: H2E Americas LLC, Philomaxcap AG, Capana, Amerimark AG, and/or Philocity Global GmbH.

RESPONSE TO REQUEST 14

Mr. Simkiss objects. This Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mr. Simkiss objects to the phrase “actual or potential transaction” as vague, ambiguous, overbroad, and lacking reasonable particularity. Mr. Simkiss objects that the phrase “refer or relate to” is vague, ambiguous, overbroad, and lacking reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. Mr. Simkiss objects that the Request generally purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case. Mr. Simkiss objects to the extent that the request purports to seek materials that are protected by attorney client privilege. Mr. Simkiss objects to the extent the Request seeks documents that are publicly available.

REQUEST FOR PRODUCTION 15

All documents and communications that refer or relate to any actual or potential transaction or agreement between H2E Americas LLC and Philomaxcap AG.

RESPONSE TO REQUEST 15

Mr. Simkiss objects. This Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mr. Simkiss objects that the phrase “refer or relate to” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports



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to seek documents that are wholly irrelevant to the litigation in question. Mr. Simkiss objects to the phrase “actual or potential transaction” as vague, ambiguous, overbroad, and lacking reasonable particularity. Mr. Simkiss objects that the Request generally purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case. Mr. Simkiss objects to the extent that the request purports to seek materials that are protected by attorney client privilege. Mr. Simkiss objects to the extent the Request seeks documents that are publicly available.

REQUEST FOR PRODUCTION 16

Records of all corporate meetings of Capana Swiss Advisors AG, Orbital AG, Philomaxcap AG, and H2E Americas LLC.

RESPONSE TO REQUEST 16

Mr. Simkiss objects. This Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mr. Simkiss objects that the request generally purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case. Mr. Simkiss objects to the extent the Request seeks documents that are publicly available.

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With respect to the Subpoena Duces Tecum to Sarah Simkiss:

REQUEST FOR PRODUCTION 14 [as labeled in original]

All communications between you and any of the following:

- | | |
|------------------------------|--------------------------------|
| (a) Shaen Bernhardt | (j) Amerimark Automotive Group |
| (b) Ashley Miron Leshem | AG |
| (c) David Hesterman | (k) Philomaxcap AG |
| (d) Nicolai Colshorn | (l) Achim Pfeffer |
| (e) Stefan Kammerlander | (m) Orbital AG |
| (f) Alexander Coenen | (n) Philocity Global GmbH |
| (g) Martin Fasser Heeg | (o) H2E Americas LLC |
| (h) Capana Swiss Advisors AG | (p) Whitetree Capital |
| (i) Amerimark Group AG | (q) Erika Zordaki |
| | (r) Josh McMorrow |

RESPONSE TO REQUEST 14

Mrs. Simkiss objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. The Request lacks reasonable particularity sufficient to identify the materials requested. Mrs. Simkiss objects to the extent that the Request purports to seek materials that are protected by attorney client privilege. Mrs. Simkiss objects that the Request purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.

REQUEST FOR PRODUCTION 15 [as labeled in original]

All communications between you and any of the following that refer or related in any way to Rymark, Inc.; AmeriMark Group AG; AmeriMark Automotive AG; Nicholas Markosian; Vicky Small; John Kirkland; and/or the lawsuit captioned Capana Swiss Advisors AG et al. v. Rymark, Inc. et al., No. 2:23-CV_00467 (D. Utah):

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1. Shaen Bernhardt
2. Capana Swiss Advisors AG
3. Orbital AG
4. Josh McMorrow
5. H2E Americas LLC
6. Venable LLP, including but not limited to John Worden, Sarah Diamond, and/or Arthur Cirulnick
7. Parsons Behle & Latimer, including but not limited to Erik Christiansen and/or Nick Greenwood.

RESPONSE TO REQUEST 15

Mrs. Simkiss objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mrs. Simkiss objects that the phrase “refer or related in any way to” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. The Request lacks reasonable particularity sufficient to identify the materials requested. Mrs. Simkiss objects to the extent that the Request purports to seek materials that are protected by attorney client privilege. Mrs. Simkiss objects that the Request purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.

REQUEST FOR PRODUCTION 23 [as labeled in original]

All documents and communications that refer or relate to AmeriMark Automotive AG, AmeriMark Group AG, 4Service Cloud Tech AG, Rymark, Inc., Nicholas Thayne Markosian, John Kirkland, and/or Vicky Small, Capana Swiss Advisors AG, Capana Swiss Advisors AG, and/or Orbital AG.

RESPONSE TO REQUEST 23

Mrs. Simkiss objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mrs. Simkiss objects that the phrase “refer or relate to” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. The Request lacks reasonable particularity sufficient to identify the materials requested. Mrs. Simkiss objects to the extent that the Request purports to seek materials that are protected by attorney client privilege. Mrs. Simkiss objects that the Request purports



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to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.

REQUEST FOR PRODUCTION 24

All documents and communications concerning Whitetree Capital.

RESPONSE TO REQUEST 24

Mrs. Simkiss objects. This Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mrs. Simkiss objects to the phrase “concerning” as vague, ambiguous, and overbroad, and lacking reasonable particularity. Mrs. Simkiss objects to the extent the Request seeks documents that are publicly available. The Request lacks reasonable particularity sufficient to identify the materials requested.

REQUEST FOR PRODUCTION 25

All documents and communications concerning Erika Zorkadi.

RESPONSE TO REQUEST 25

Mrs. Simkiss objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mrs. Simkiss objects that the word “concerning” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to this case. The Request lacks reasonable particularity sufficient to identify the materials requested.

REQUEST FOR PRODUCTION 26

All documents and communications that refer or relate to any actual or potential transaction between any of the following: H2E Americas LLC, Philomaxcap AG, Capana, Amerimark AG, and/or Philocity Global GmbH.

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LAW
PARTNERS

RESPONSE TO REQUEST 26

Mrs. Simkiss objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mrs. Simkiss objects that the phrase “refer or related to” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. Mrs. Simkiss objects that the phrase “potential transaction” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. The Request lacks reasonable particularity sufficient to identify the materials requested. Mrs. Simkiss objects to the extent that the Request purports to seek materials that are protected by attorney client privilege. Mrs. Simkiss objects that the Request purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.

REQUEST FOR PRODUCTION 27

All documents and communications that refer or relate to any actual or potential transaction or agreement between H2E Americas LLC and Philomaxcap AG.

RESPONSE TO REQUEST 27

Mrs. Simkiss objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mrs. Simkiss objects that the phrase “refer or related to” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. Mrs. Simkiss objects that the phrase “potential transaction or agreement” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. The Request lacks reasonable particularity sufficient to identify the materials requested. Mrs. Simkiss objects to the extent that the Request purports to seek materials that are protected by attorney client privilege. Mrs. Simkiss objects that the Request purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.



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REQUEST FOR PRODUCTION 28

Records of all corporate meetings of Capana Swiss Advisors AG, Orbital AG, Philomaxcap AG, and H2E Americas LLC.

RESPONSE TO REQUEST 28

Mrs. Simkiss objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mrs. Simkiss objects that the phrase “corporate meetings” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. Mrs. Simkiss objects to the extent that the Request purports to seek materials that are protected by attorney client privilege. Mrs. Simkiss objects that the Request purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.

REQUEST FOR PRODUCTION 29

All documents and communications that refer or relate to any business dealings between you and Orbital AG and/or Capana Swiss Advisors AG, including but not limited to loans you have received from and loans you have provided to those entities.

RESPONSE TO REQUEST 29

Mrs. Simkiss objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. Mrs. Simkiss objects that the phrase “refer or relate to” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. Mrs. Simkiss objects that the phrase “business dealings” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. The Request lacks reasonable particularity sufficient to identify the materials requested. Mrs. Simkiss objects to the extent that the Request purports to seek materials that are protected by attorney client privilege. Mrs. Simkiss objects that the Request purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.



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With respect to the Subpoena Duces Tecum to H2E Americas LLC (“H2E”):

REQUEST FOR PRODUCTION 1

All communications between you and any of the following:

- | | |
|-----------------------------|-------------------------------|
| a) Shaen Bernhardt | j) Amerimark Automotive Group |
| b) Ashley Miron Leshem | AG |
| c) David Hesterman | k) Philomaxcap AG |
| d) Nicolai Colshorn | l) Orbital AG |
| e) Stefan Kammerlander | m) Philocity Global GmbH |
| f) Alexander Coenen | n) H2E Americas LLC |
| g) Martin Fasser Heeg | o) Whitetree Capital |
| h) Capana Swiss Advisors AG | p) Erika Zordaki |
| i) Amerimark Group AG | q) Josh McMorrow |

RESPONSE TO REQUEST 1

H2E objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. H2E objects that Request 1 demands communications between H2E and itself. The Request lacks reasonable particularity sufficient to identify the materials requested. H2E objects to the extent that the Request purports to seek materials that are protected by attorney client privilege. H2E objects that the Request purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.

REQUEST FOR PRODUCTION 2

All documents and communications that refer or relate to AmeriMark Automotive AG, AmeriMark Group AG, 4Service Cloud Tech AG, Rymark, Inc., Nicholas Thayne Markosian, John Kirkland, Vicky Small, Capana Swiss Advisors AG, Capana Swiss Advisors AG, and/or Orbital AG.



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PARTNERS

RESPONSE TO REQUEST 2

H2E objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. H2E objects that the phrase “refer or relate to” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. The Request lacks reasonable particularity sufficient to identify the materials requested. H2E objects to the extent that the Request purports to seek materials that are protected by attorney client privilege. H2E objects that the Request purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.

REQUEST FOR PRODUCTION 3

All documents and communications that refer or relate to any actual or potential transaction between or among any of the following: H2E Americas LLC, Philomaxcap AG, Capana, Amerimark AG, and/or Philocity Global GmbH.

RESPONSE TO REQUEST 3

H2E objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. H2E objects that the phrase “refer or relate to” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. H2E objects that the phrase “potential transaction” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. The Request lacks reasonable particularity sufficient to identify the materials requested. H2E objects to the extent that the Request purports to seek materials that are protected by attorney client privilege. H2E objects that the Request purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.

REQUEST FOR PRODUCTION 4

Any consideration (whether cash, stock, real property, or otherwise) related to any of the actual potential transactions listed above.

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RESPONSE TO REQUEST 4

H2E objects. The Request references a request (Request for Production 3) that is overbroad, unduly burdensome, and is not reasonably limited in scope or time. This Request is therefore equally overbroad, unduly burdensome, and is not reasonably limited in scope or time. H2E objects that the phrase “related to” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. H2E objects that the phrase “transactions listed above” refers to the prior Request (Request for Production 3) a request which lists no transactions and that therefore the phrase is vague, ambiguous, overbroad, lacks reasonable particularity. H2E objects that the phrase “any of the actual potential transactions” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. The Request lacks reasonable particularity sufficient to identify the materials requested. H2E objects to the extent that the Request purports to seek materials that are protected by attorney client privilege. H2E objects that the Request purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.

REQUEST FOR PRODUCTION 5

Records of all corporate meetings of H2E Americas LLC.

RESPONSE TO REQUEST 5

H2E objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. H2E objects that the Request purports to seek documents that are not reasonably related to the litigation in question or proportional to the needs of that case.

REQUEST FOR PRODUCTION 6

All documents and communications concerning Whitetree Capital.

GOLDSTEIN
LAW
PARTNERS

RESPONSE TO REQUEST 6

H2E objects. This Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. H2E objects to the phrase “concerning” as vague, ambiguous, and overbroad, and lacking reasonable particularity. H2E objects to the extent the Request seeks documents that are publicly available. The Request lacks reasonable particularity sufficient to identify the materials requested.

REQUEST FOR PRODUCTION 7

All documents and communications concerning Erika Zorkadi.

RESPONSE TO REQUEST 7

H2E objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. H2E objects that the word “concerning” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to this case. The Request lacks reasonable particularity sufficient to identify the materials requested.

REQUEST FOR PRODUCTION 8

All documents and communications that refer or relate to any business dealings between you and Orbital AG or Capana Swiss Advisors AG, including but not limited to loans you have received from Orbital AG or Capana Swiss Advisors AG and loans you have provided to Orbital AG or Capana Swiss Advisors AG.

RESPONSE TO REQUEST 8

H2E objects. The Request is overbroad, unduly burdensome, and is not reasonably limited in scope or time. H2E objects that the phrase “refer or relate to” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. H2E objects that the phrase “business dealings” is vague, ambiguous, overbroad, lacks reasonable particularity, and purports to seek documents that are wholly irrelevant to the litigation in question. The Request lacks reasonable particularity sufficient to identify the



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LAW
PARTNERS

materials requested. H2E objects to the extent that the Request purports to seek materials that are protected by attorney client privilege. H2E objects that the Request purports to seek materials that are not reasonably related to the litigation in question or proportional to the needs of that case.

If you would like to meet and confer regarding these issues and the matter of fee sharing with respect to responsiveness and privilege review costs, I am happy to have a call to discuss. With a bit of advanced notice, I am available on December 30 & 31 and January 2 & 3 during normal east coast business hours.

Sincerely,

Jonathan S. Goldstein, Esq.